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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/967,152

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Christopher Uhlik

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08/29/2007

BERKELEY LAW & TECHNOLOGY GROUP, LLP

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EXAMINER

TIEU, BINH KIEN

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

08/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/967,152

Applicant(s)

UHLIK ET AL.

Examiner

/BINH K. TIEU/

Art Unit

2614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-22 and 77-100.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please the attached sheets.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/BINH K. TIEU/
Primary Examiner
Art Unit: 2614

Advisory Action

In response to the Applicant's arguments mainly argued to rejections of independent claims 1, 77 and 90 from the last paragraph, page 11 through the second paragraph, page 12 wherein the Applicants stated as followings:

"...Black does not describe the "collecting statistical data for a plurality of user terminals at an access point of a network" recited in claim 1. Claims 77 and 90 include similar language. The Examiner cited the Internet Partner's compiling of data relating to user traffic on The Internet to anticipate this element. But Black fails to describe in detail where in its system the compiling of data occurs...Black does not include sufficient disclosure to support the examiner's position..."

"...Moreover, Black implies that the access point does not collect data. The examiner is apparently citing Black's Carrier as the access point or the operator of the access point. The compiled data in Black is provided to the Carrier for a user so that the Carrier can develop services and applications. If the Carrier was indeed serving as the access point, the Carrier would already have the data. There would be no need for the Internet Partner to send the data it received from the Carrier back to the Carrier."

The Examiner respectfully disagrees with the Applicants as stated above. Black teaches:

a/. ***"...Host server 128 is typically resident at and under the control of a wireless carrier that operate airnet 102..."*** (see col.8, lines 1-3)

b/. ***"...Some or all of these services or applications may be provided by Internet Partner 504, with others provided by Carrier 502, or by third party companies that pay a fee to Internet Partner 504 for placement of a link to their services or applications on the web-site...to user."*** (see col.9, line 65 through col.10, line 6) (emphasis added)

c/. ***"The Internet Partner may also obtain revenue by tracking and compiling "data" relating to user traffic on the Internet (e.g., types of services or applications utilized, amount of money spent in transactions, etc.) and provide this data to the respective Carrier for that user..."*** (see col.12, line 66 through col.13, line 3) and ***"...This revenue may consist of a flat fee, a fee per user or user group that accesses the portal, a percentage of the additional Telecom revenue generated by subscribers utilizing the Carrier's network to access the portal and its related services and applications, or another agreed upon basis...."*** (see col.10, lines 49-54)

d/. “...*Telecom Revenue 512 may be in the form of a payment to Internet Partner 504 (from Wireless Carrier)*...” (see col.10, lines 58-60)

In phrase a/. above, the Host Server/wireless carrier read on term “**server**” in the claims.

In phrase b/., Internet Partner 504 (read on “**access point**”) provides links and accesses to services and applications and receives payment (e.g., fees) from such provided links.

In order to receive the fees, the Internet Partner must provide information related to the established links or accesses from Carrier’s subscribers to such services and/or applications. Such information, according to those skilled in the art, include subscribers’ identities such as mobile phone IDs, where the IDs are further assigned and associated with subscribers’ billing accounts, the port numbers of the PC devices, providers’ identities together with information of type of services, applications, etc. provided to the carriers’ subscribers such as stock, transaction, time usage for downloading, bandwidth, etc. In phrase c/., the Internet Partner obtains revenue by tracking and compiling “data” relating to user traffic on the Internet. The “data” described in this phrase here is information collected from subscribers’ usages concerning about the subscribers’ telecommunication equipment such as mobile phone devices, PC device, etc. such as IDs, billing account, etc. and provider identifies, services and/or application provided by carriers, etc. which are reported back to the Host Server/wireless carrier for a payment (i.e., revenues sharing or reimbursements). The Host Server/wireless carriers derived the payment and send it to the Internet Portal (access point) in the form of “Telecom Value 512” as shown in figure 3. The telecom value 512 is determined based on a fee, flat fee, fee per user, etc. Lastly, in phrase c/., the Internet Partner receives the “Telecom Revenue 512” as the payment from the wireless carrier 502.

It is clearly that Black teaches the payment derived from the host server/wireless carrier is determined based on variety of fees, etc. and provided to the Internet Portal.

With all remarks to the Applicants' arguments above, the Examiner believes that the rejection to claims set forth in the Final Rejection has been proper and permissible on the merits. Therefore, the rejection to claims have been maintained for the future Appeals.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binh K. Tieu whose telephone number is (571) 272-7510 and E-mail address: BINH.TIEU@USPTO.GOV.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Curtis Kuntz, can be reached on (571) 272-7499 and **IF PAPER HAS BEEN MISSED FROM THIS OFFICIAL ACTION PACKAGE, PLEASE CALL CUSTOMER SERVICE FOR THE SUBSTITUTIONS OR COPIES.**

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/BINH K. TIEU/
Primary Examiner
Technology Division 2614

Date: August 2007